

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DONNA SMITH,  
Plaintiff,

-VS-

THE KROGER COMPANY AND  
KROGER TEXAS L.P  
Defendants.

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C.A. NO. 4:21-cv-00524

JURY TRIAL DEMANDED

**DEFENDANTS' ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT**

COME NOW, Defendants, KROGER TEXAS L.P. and THE KROGER COMPANY., improperly named as THE KROGER COMPANY (hereinafter sometimes referred to as "Kroger"), and files this Original Answer to Plaintiff's Original Complaint, along with their demand for a Jury Trial.

**ADMISSIONS & DENIALS**

1. Defendant Kroger admits the allegations relating to Jurisdiction, Venue and Parties in paragraphs 2 through 8 of Plaintiff's Original Complaint.
2. Defendant admits the allegations in paragraphs 9 through 11 of Plaintiff's Original Complaint.
3. As to paragraph 12, Defendant denies sufficient physical space is not available for the employees, but admits the remainder of the allegations.
4. Defendant admits the allegations in paragraphs 13 through 18 of Plaintiff's Original Complaint.
5. Defendant denies the allegations in paragraph 19, except that the store in the background photo is where Kroger supervisors and other employees perform their duties.
6. Defendant admits the allegations in paragraph 20 of Plaintiff's Original Complaint.

7. Defendant admits that the inside of the Kroger kiosk must be cleaned, as alleged in paragraph 21, but denies the remainder of the allegations in paragraph 21 of Plaintiff's Original Complaint.

8. Defendant denies the allegations in paragraphs 22 through 24 of Plaintiff's Original Complaint.

9. Defendant admits the allegations in paragraphs 25 through 28 of Plaintiff's Original Complaint.

10. Defendant denies the allegations relating to damages, paragraphs 29 through 31 of Plaintiff's Original Complaint.

11. Defendant admits the floors are to be cleaned, but is without information other than from Plaintiff herself as to how she caused her own injury as reflected in paragraphs 32 through 36.

12. Defendant denies Plaintiff suffered a fractured spine in multiple places, or that she was unable to return to work as alleged in paragraph 37 of Plaintiff's Original Complaint.

13. Defendant admits that Kroger is a non-subscriber as alleged in paragraph 38 of Plaintiff's Original Complaint.

14. Defendant admits generally the duties of employers to their employees and that Plaintiff's injury as she has described occurred in the course and scope of her employment as reflected in paragraphs 39 through 42 of Plaintiff's Original Complaint.

15. Defendant denies the allegations in paragraphs 43 through 48 of Plaintiff's Original Complaint.

16. Defendant admits the allegations in paragraph 49 of Plaintiff's Original Complaint.

17. Defendant denies the allegations in paragraphs 50 through 57 of Plaintiff's Original Complaint.

18. Defendant denies the allegations relating to Gross Negligence in paragraphs 58 through 61 of Plaintiff's Original Complaint.

19. Defendant denies the allegations in paragraph 62 of Plaintiff's Original Complaint.

20. Defendant denies Plaintiff's damages claim in paragraph 63 of Plaintiff's Original Complaint, and those allegations in the Prayer.

### **PRAYER**

WHEREFORE PREMISES CONSIDERED, Defendants, KROGER TEXAS L.P. and THE KROGER COMPANY., improperly named as THE KROGER COMPANY., pray that Plaintiff take nothing by reason of this suit, that Defendants go hence without day, for costs, and for general relief.

Respectfully submitted,

THE AKERS FIRM, PLLC

By: /s/ Brock C. Akers

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ATTORNEY FOR DEFENDANTS

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing instrument has been served on all counsel of record through the court's CM/ECF system on the 24th day of February, 2021.

/s/ Brock C. Akers  
Brock C. Akers